



August 19, 2002

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2002-4558

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167264.

The Northside Independent School District (the “district”) received a request for records pertaining to allegations of suspected abuse or neglect made against the parents of a named child, a district student. The requestor represents the child’s parents. While you acknowledge that the letter falls under the definition of “education record” under the Family Educational Rights and Privacy Act (“FERPA”), title 20 of section 1232(g) of the United States Code, and must ordinarily be released to the representative of the parents in this instance, you contend that the identities of the employee-witnesses making the allegations are excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 261.201 of the Family Code and the federal Child Abuse Prevention and Treatment Act (“CAPTA”), title 42 of section 5106a(b)(1)(A) of the United States Code. We have considered the exception you claim and reviewed the submitted information.

We agree that the submitted information is subject to FERPA. 20 U.S.C. § 1232g. FERPA protects a student’s privacy interests in “education records.” *See* 20 U.S.C. § 1232g. “Education records” are defined as those records which contain information that is directly related to a student and which are maintained by an educational agency or institution or by a party acting for such agency or institution. Under FERPA, an education agency or institution is generally required to provide parents of minor students access to the students’s education records. Thus, in this case, the requestor, as a representative of the parents of the student whose education records are requested, has a right to the information under FERPA.

However, as you state, the submitted information is also subject to CAPTA, which provides that a state must meet certain eligibility requirements before it may receive a federal grant for child abuse prevention and treatment programs. 42 U.S.C. 5106a(a)(8)(A)(v). CAPTA requires states to provide for methods to preserve the confidentiality of information concerning child abuse and neglect. 42 U.S.C. 5106a(b)(2)(A)(v). In accordance with CAPTA, section 261.201(a)(1) of the Family Code makes confidential "a report of alleged, or suspected abuse or neglect made under this chapter and the identity of the person making the report." Fam. Code § 261.201(a)(1). We note that the district transferred the information at issue to the Department of Protective and Regulatory Services (the "DPRS").¹ Thus, the issue is the conflict of laws with respect to a parent's right of access to the parent's child's education records when that record is a report of suspected child abuse or neglect. Under FERPA, a parent has a right to his child's education records maintained by the child's school with exceptions not pertinent here. Under state law enacted in accordance with CAPTA, the information, as a report of child abuse is confidential.

The United States Department of Education's Family Policy Compliance Office (the "compliance office") has addressed the conflict between FERPA and a Texas law enacted pursuant to CAPTA in its letter to a law firm representing the San Antonio Independent School District. The compliance office is responsible for interpreting and construing FERPA and we defer to its decision. We have attached a copy of the compliance office's letter ruling for your convenience.

The compliance office found that because the Texas statute at issue, section 261.201(a) of the Family Code which required the release of information from a student's education records, was promulgated pursuant to CAPTA, any statutory conflict would be between two federal statutes rather than the Texas statute and FERPA. As the two federal statutes were in irreconcilable conflict, the compliance office concluded that the later-enacted statute, CAPTA, governs. *Watt v. Alaska*, 451 U.S. 259, 267 (1981). Thus, the compliance office concluded that the Texas Family Code provision concerning reporting suspected incidents of abuse or neglect prevailed over FERPA.

¹We note that because the investigation has been referred to the Department of Protective and Regulatory Services ("DPRS"), the requestor, who is a parent, is entitled to access DPRS's records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

We agree with the compliance office's ruling that CAPTA prevails over FERPA. Under Texas law enacted in accordance with CAPTA, the report is made confidential. Fam. Code § 261.201. Thus, we conclude that the district must withhold the report based on section 552.101 in conjunction with section 261.201 of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

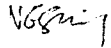
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 167264

Enc: Submitted document
Letter from the United States Department of Education

c: Ms. Deirdre Vasquez
732 Culebra
San Antonio, Texas 78201
(w/o enclosures)